

<p style="text-align: right;">65</p> <p>1 the people in his work group a number of times, 2 and as a result of his recommendation of my work I 3 did individual consulting sessions with a number of 4 people that were in his real-estate research group. 5 Q. Anyone else praise your performance or your 6 work? 7 A. That's all I can think of at this time. 8 [Kincaid Exhibit 8 marked for 9 identification] 10 Q. Mr. Kincaid, would you examine the document 11 that's been handed to you as marked Exhibit 8. 12 Is that the performance evaluation 13 you referred to earlier when you were talking about 14 Sheila Burroughs' change in her assessment of your 15 performance? 16 A. There is more than one document. This is 17 one of the documents. 18 Q. What was the other document? 19 A. I was given a document; I don't know how to 20 describe it. 21 It was kind of in a memo form, and 22 it just listed points that were the shortcomings 23 of my work; and then she verbally said that this is 24 a serious matter, and there is urgency attached to</p>	<p style="text-align: right;">67</p> <p>1 A. Well, I told Sheila I disagreed with the 2 great majority of it, and thought that it was very 3 abrupt; and I was quite surprised at the nature of 4 what it said. 5 And I did complain to a colleague of 6 mine, who became a friend, named Tim Megeysey. 7 Q. Did you complain to Ms. Burroughs' 8 superiors? 9 A. No, I did not. 10 Q. Did you complain or call the personnel 11 center after you received this performance 12 assessment? 13 A. I personally did not call or communicate 14 with the personnel center. 15 Q. Did anyone call on your behalf? 16 A. I retained legal counsel, and my legal 17 counsel communicated with the legal department of 18 Bank of America. 19 Q. But you didn't raise the issue directly 20 with anyone above Sheila Burroughs or in the human- 21 resource department? 22 A. No, I did not personally. 23 Q. How soon after you got this performance 24 assessment did you retain the services of an</p>
<p style="text-align: right;">66</p> <p>1 it. 2 [Kincaid Exhibit 9 marked for 3 identification] 4 Q. Would you examine Exhibit Number 9, please. 5 Is Exhibit Number 9 the document you 6 were just referring to? 7 A. Yes, it is. 8 Q. And this is, I agree, in somewhat of a memo 9 form. Correct? 10 A. Correct. 11 Q. Is that your signature on the second page? 12 A. Yes, it is. 13 Q. Did you agree or disagree with this 14 assessment of your performance? 15 A. I disagreed. 16 Q. Could you tell me why you did not make any 17 comments in the section devoted to Associate 18 Comments, the second page? 19 A. It was not pointed out to me that I had the 20 option to write down comments. I verbally responded 21 to many of the points on the page, but to be honest 22 I didn't notice that. 23 Q. Did you complain about this assessment to 24 anyone?</p>	<p style="text-align: right;">68</p> <p>1 attorney? 2 A. Within two weeks. 3 Q. And that was Ms. Norcross? 4 A. That's correct. 5 Q. Is Sheila Burroughs the only person that 6 criticized your performance? 7 A. No. 8 Q. Who else? 9 A. Richard McFarland criticized my 10 performance. 11 Q. What was the nature of his criticism? 12 A. There was some ambiguity about our roles. 13 We both had statistics backgrounds; we both knew 14 advanced analysis. 15 He said to me on, probably, several 16 occasions that he thought I was encroaching on his 17 area of expertise. 18 And on more than on one occasion after 19 I had issued information, findings, recommendations, 20 to somebody else within CAMR, he sought out that 21 person to argue against my recommendations and 22 say that they were ill-founded. 23 Q. At some point, of course, you were 24 terminated from your position with Bank of America;</p>

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<p style="text-align: right;">69</p> <p>1 correct?</p> <p>2 A. Correct.</p> <p>3 Q. Do you know who made the decision to</p> <p>4 terminate your employment?</p> <p>5 MR. FINE: Objection.</p> <p>6 A. I don't know. I suspect it was Sheila, but</p> <p>7 I don't know.</p> <p>8 [Lunch recess taken]</p> <p>9 BY MR. KANE:</p> <p>10 Q. Mr. Kincaid, did Ms. Burroughs meet with</p> <p>11 you regarding your termination?</p> <p>12 A. Yes, she did.</p> <p>13 Q. Did she tell you what the reason was for</p> <p>14 your termination?</p> <p>15 A. She said I had continued to not live up</p> <p>16 to what her hopes were or her desires were for me</p> <p>17 to improve, and that the time had come for me to</p> <p>18 leave.</p> <p>19 Q. Did you complain to anyone over</p> <p>20 Ms. Burroughs, that is any of her supervisors</p> <p>21 or upper management, about your termination?</p> <p>22 A. No.</p> <p>23 Q. If you would refer to Exhibit Number 2,</p> <p>24 which is the complaint in the stack next to you</p>	<p style="text-align: right;">71</p> <p>1 leave because of my age.</p> <p>2 Q. You say from April to June?</p> <p>3 A. Yes.</p> <p>4 Q. Is that the time period?</p> <p>5 A. Prior to April, she had been supportive,</p> <p>6 she had been hospitable and very friendly towards</p> <p>7 me; and prior to the meeting in April I had no</p> <p>8 reason to believe that my performance was below</p> <p>9 par or needed significant improvement.</p> <p>10 Q. But you say after that you started getting</p> <p>11 harassing messages?</p> <p>12 A. After the meeting in April, Sheila's manner</p> <p>13 toward me in all different aspects of our</p> <p>14 relationship changed dramatically.</p> <p>15 Q. How so?</p> <p>16 A. She would frown if she saw me in the</p> <p>17 Halumis. She avoided contact with me. She ceased</p> <p>18 kind of friendly chitchat in the hall; activities</p> <p>19 that she had engaged in prior to the meeting in</p> <p>20 April.</p> <p>21 Looking across all the spectrum of</p> <p>22 activities that you engage in with a coworker, her</p> <p>23 manner toward me changed very abruptly, and became</p> <p>24 aloof and somewhat hostile.</p>
<p style="text-align: right;">70</p> <p>1 there, I think it's 2. Let me get it. Yes;</p> <p>2 Exhibit Number 2.</p> <p>3 And I'll preface my question with</p> <p>4 acknowledging that this may just be stylistic; but</p> <p>5 if you turn to Page 7, Paragraph 42 at the bottom,</p> <p>6 do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. It says, Defendant harassed plaintiff and</p> <p>9 terminated plaintiff's employment because of</p> <p>10 plaintiff's age.</p> <p>11 Do you contend that you were harassed</p> <p>12 because of your age; separate and apart from your</p> <p>13 termination?</p> <p>14 A. I believe that her harassment of me was</p> <p>15 related to my age. That's what I would say.</p> <p>16 Q. Well, tell me in what manner you were</p> <p>17 harassed because of your age.</p> <p>18 A. Well, when I got harassing messages from</p> <p>19 Sheila, she did not directly make references to</p> <p>20 my age;</p> <p>21 but I believe that her continual pattern</p> <p>22 of harassment and her continued kind of reinforcing</p> <p>23 negative messages during the period between April</p> <p>24 and June was related to her desire to have me</p>	<p style="text-align: right;">72</p> <p>1 Q. Anything more specific than that; say a</p> <p>2 harassing voice-mail message or face-to-face</p> <p>3 message that you consider harassing?</p> <p>4 A. The morning of the meeting in April, that's</p> <p>5 been referenced in these documents, I received news</p> <p>6 that my grandmother passed away.</p> <p>7 I was quite emotionally upset, and I</p> <p>8 immediately made plans with my sister on the phone</p> <p>9 to attempt to attend the funeral, which was going to</p> <p>10 be the next day in Oklahoma City.</p> <p>11 I notified Sheila early in the morning,</p> <p>12 around eight or nine, that I had had a death in the</p> <p>13 family, and I wished to be absent from work the next</p> <p>14 day and the day after, because of a death in the</p> <p>15 family, to attend a funeral.</p> <p>16 And I didn't receive a reply back for an</p> <p>17 hour or two, and we had our regular weekly meeting</p> <p>18 that morning.</p> <p>19 That was the meeting at which she gave</p> <p>20 me this extremely negative review, and she said that</p> <p>21 I could only attend the funeral if I was certain I</p> <p>22 could get all my work done while I was at the</p> <p>23 funeral.</p> <p>24 And I was really shocked at her</p>

<p style="text-align: right;">73</p> <p>1 behavior, and I thought it was very callous and 2 harsh of her to effectively deny an employee the 3 right to attend a funeral of a family member. 4 Q. But, as you said, your age was not 5 mentioned in that conversation? 6 A. That's correct. 7 Q. Any other forms of harassment other 8 than the change in her demeanor towards you and 9 the treatment you received pertaining to the funeral 10 of your grandmother? 11 A. Sheila asked me to work on a specific 12 project for another group within the bank, and I 13 began work on this project. 14 Whenever I would go to Sheila to 15 get her reaction or input to things I had done, 16 she constantly contradicted earlier information or 17 earlier direction that she had given me. 18 Her tone and manner in these 19 meetings were hostile and attacking; and it 20 made me feel extremely uncomfortable, because 21 she seemed angry at me before I even walked into 22 the room. 23 And I made three or four different 24 attempts to come up with work that she felt was</p>	<p style="text-align: right;">75</p> <p>1 away now? 2 Q. Yes, you can put that away. 3 A. I'm sorry. Could you rephrase the 4 question? 5 Q. I believe you testified earlier that you 6 were not certain who made the final decision to 7 terminate you. Is that correct? 8 A. I am not certain; that's correct. 9 Q. Who do you think it was? 10 A. In the meeting the morning that Sheila 11 notified me I was being let go, she used the term 12 We. She said, We've decided that your time at Bank 13 of America has come to an end. 14 So, that suggests to me that there was 15 someone else involved besides Sheila, but I don't 16 know who it was. 17 Q. And on what basis do you attribute your 18 termination and Sheila Burroughs' demeanor towards 19 you to your age? 20 A. I'm sorry; could you say that again? 21 Q. On what basis do you attribute these acts 22 to your age? 23 A. Talking with other people that worked in 24 CAMR and observing activities around CAMR, there</p>
<p style="text-align: right;">74</p> <p>1 acceptable; and because she repeatedly contradicted 2 earlier statements that she had said, time and time 3 again, the result of the meeting was that I failed 4 to perform as expected, and everything I had come 5 up with had to be redone again. 6 And after the third such meeting on this 7 particular topic, I really began to believe that the 8 meetings were being held for the purpose of 9 discouraging me and harassing me. 10 Q. What was this other project called? 11 A. Well, it was work for someone in another 12 area, and involved acquiring information about, I 13 believe it was people's attitudes toward home 14 ownership. 15 I'm not completely sure what the topic 16 was. It's been quite a while, but I believe it was 17 involving home ownership. 18 Q. And who were you doing this project for? 19 A. It was a lady in a different work group. 20 I can't remember her name. 21 Q. And you testified earlier that you don't 22 know who made the decision to terminate your 23 employment; is that correct? 24 A. Are we done with this? Can I put this one</p>	<p style="text-align: right;">76</p> <p>1 were several other employees that I believe were 2 being subjected to the same treatment as I was 3 at the same time period. All of those 4 individuals were over 40 years old. 5 Q. Who did you talk to that led you to this 6 conclusion? 7 A. Well, my friend Tim Megeysey... 8 Q. Tim who? 9 A. Tim Megeysey. 10 Q. Any others? 11 A. One of the people who I believe was being 12 subjected to the same treatment worked for Paul, the 13 person I mentioned earlier. 14 Q. Who was that individual? 15 A. I can't recall his name. 16 Q. And what happened to that individual that 17 worked for Paul? 18 A. He left the firm. 19 Q. Did you talk with that person? 20 A. No, I did not. 21 Q. So that's an observation? 22 A. That's correct. 23 Q. And that person, whoever it is, is over 40 24 years old?</p>

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<p style="text-align: right;">101</p> <p>1 layoffs and severance pay.</p> <p>2 Q. Did you believe that the way that Sheila</p> <p>3 Burroughs changed her demeanor towards you and her</p> <p>4 approach towards you was designed to get you to do</p> <p>5 something?</p> <p>6 A. I thought it was designed to intimidate me</p> <p>7 into resigning my position, and there are two</p> <p>8 reasons I thought that.</p> <p>9 One was that in my mind there</p> <p>10 was no real objective reason for criticizing my</p> <p>11 performance, because so much of what she said was</p> <p>12 artificially generated or trumped up, so to speak;</p> <p>13 and I thought, since there appeared</p> <p>14 to be no rational explanation of why they would be</p> <p>15 so critical with so little justification, that the</p> <p>16 intent must be to kind of scare me or intimidate</p> <p>17 me into resigning.</p> <p>18 And a supporting reason that</p> <p>19 I believe that was true is that somewhere in</p> <p>20 the details of all these employment documents</p> <p>21 there is a clause that, if you resign your position</p> <p>22 voluntarily before the end of a calendar year, that</p> <p>23 much of the relocation money that you were paid as</p> <p>24 part of a relocation package has to be returned</p>	<p style="text-align: right;">103</p> <p>1 aisleway between the cubicles heading for the</p> <p>2 elevator; and Sheila came out of her aisle and</p> <p>3 followed me partway down the main pathway, so to</p> <p>4 speak, and stopped me as I was about to head down</p> <p>5 toward the elevator and said, I'm really sorry this</p> <p>6 has happened.</p> <p>7 She handed me a slip of paper and said,</p> <p>8 This is my home number. She said, Call me tonight</p> <p>9 at home, and I'll tell you what really happened</p> <p>10 here.</p> <p>11 MR. FINE: Those are my questions.</p> <p>12 EXAMINATION</p> <p>13 BY MR. KANE:</p> <p>14 Q. Just before your attorney, Mr. Fine, asked</p> <p>15 you this series of questions, we took a break, did</p> <p>16 we not?</p> <p>17 A. Yes, we did.</p> <p>18 Q. Did you and Mr. Fine discuss your testimony</p> <p>19 during that break?</p> <p>20 A. Yes, we did.</p> <p>21 Q. Did you call Sheila Burroughs at home?</p> <p>22 A. No, I did not.</p> <p>23 Q. Why not?</p> <p>24 A. I was very emotionally upset about the</p>
<p style="text-align: right;">102</p> <p>1 to the bank.</p> <p>2 In my case, the sum would have</p> <p>3 been significant, somewhere in the neighborhood</p> <p>4 of \$70,000 to \$100,000; and, although I'm not sure</p> <p>5 this is a primary reason they tried to force me to</p> <p>6 resign, I thought the timing of what they were doing</p> <p>7 was related to the fact that they would receive this</p> <p>8 lump sum of cash back if I resigned before August</p> <p>9 19, 2003.</p> <p>10 Q. You referred to the conversation that you</p> <p>11 had with Sheila Burroughs in which she informed you</p> <p>12 that you were being terminated.</p> <p>13 A. Yes.</p> <p>14 Q. Was that the last conversation you ever had</p> <p>15 with Sheila Burroughs?</p> <p>16 A. No, it was not.</p> <p>17 Q. What was the last conversation you ever had</p> <p>18 with her?</p> <p>19 A. I was told ahead to leave that day.</p> <p>20 I packed up a box of my personal</p> <p>21 belongings, took it from the building, put it in</p> <p>22 my car, returned, and got another load of belongings</p> <p>23 in another box.</p> <p>24 I was carrying the box down the</p>	<p style="text-align: right;">104</p> <p>1 events of the day; and because in my mind Sheila's</p> <p>2 comments amounted to an admission that the campaign,</p> <p>3 so to speak, to have me resign and/or to fire me had</p> <p>4 been a sham, I was not sure if this also was another</p> <p>5 trick or a sham that was trying to trick me in some</p> <p>6 way into doing something that was adverse to my</p> <p>7 interests.</p> <p>8 And I just didn't trust that it was a</p> <p>9 genuine communication.</p> <p>10 Q. When did you leave the bank? When were you</p> <p>11 fired; what date?</p> <p>12 A. I believe it was June 16. I could be off</p> <p>13 by a couple of days.</p> <p>14 Q. Who told you that the bank terminated</p> <p>15 people at the end of the quarter in order to boost</p> <p>16 earnings?</p> <p>17 A. Sheila Burroughs.</p> <p>18 Q. When did she tell you that?</p> <p>19 A. It was sometime in the fall of 2003, before</p> <p>20 a staff meeting.</p> <p>21 Q. How did this conversation come up?</p> <p>22 A. There had been office gossip about layoffs</p> <p>23 at the end of a quarter.</p> <p>24 Q. Office gossip?</p>

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